

NATIONAL COMPANY LAW APPELLATE TRIBUNAL, NEW DELHI

Company Appeal (AT) (Insolvency) No. 283 of 2019

IN THE MATTER OF:

Sunil Tandon

...Appellant

Vs

Manoj Kumar Anand, I.R.P. & Ors.

....Respondents

Present:

For Appellant: Mr. Rishi Kapoor, Mr. Satish Rai and Mr. Abhay Kaushik, Advocates.

For Respondents: Mr. Sabhya Chaudhary, Advocate for RP.

Mr. Arvind Sinha, Mr. Asif Ahmed, Ms. Renu Khanna, Mr. Jitender Choudhary and Mr. Bijendra Singh, Advocates for Intervener.

ORDER

15.04.2019: This appeal has been preferred by the Appellant – ‘Sunil Tandon’, shareholder of ‘M/s Radhey Sham Tandon (MFG) Pvt. Ltd.’ against order dated 13th March, 2019 passed by the Adjudicating Authority (National Company Law Tribunal), Principal Bench, New Delhi, which reads as follows:-

“ORDER

CA-444(PB)/2019:-

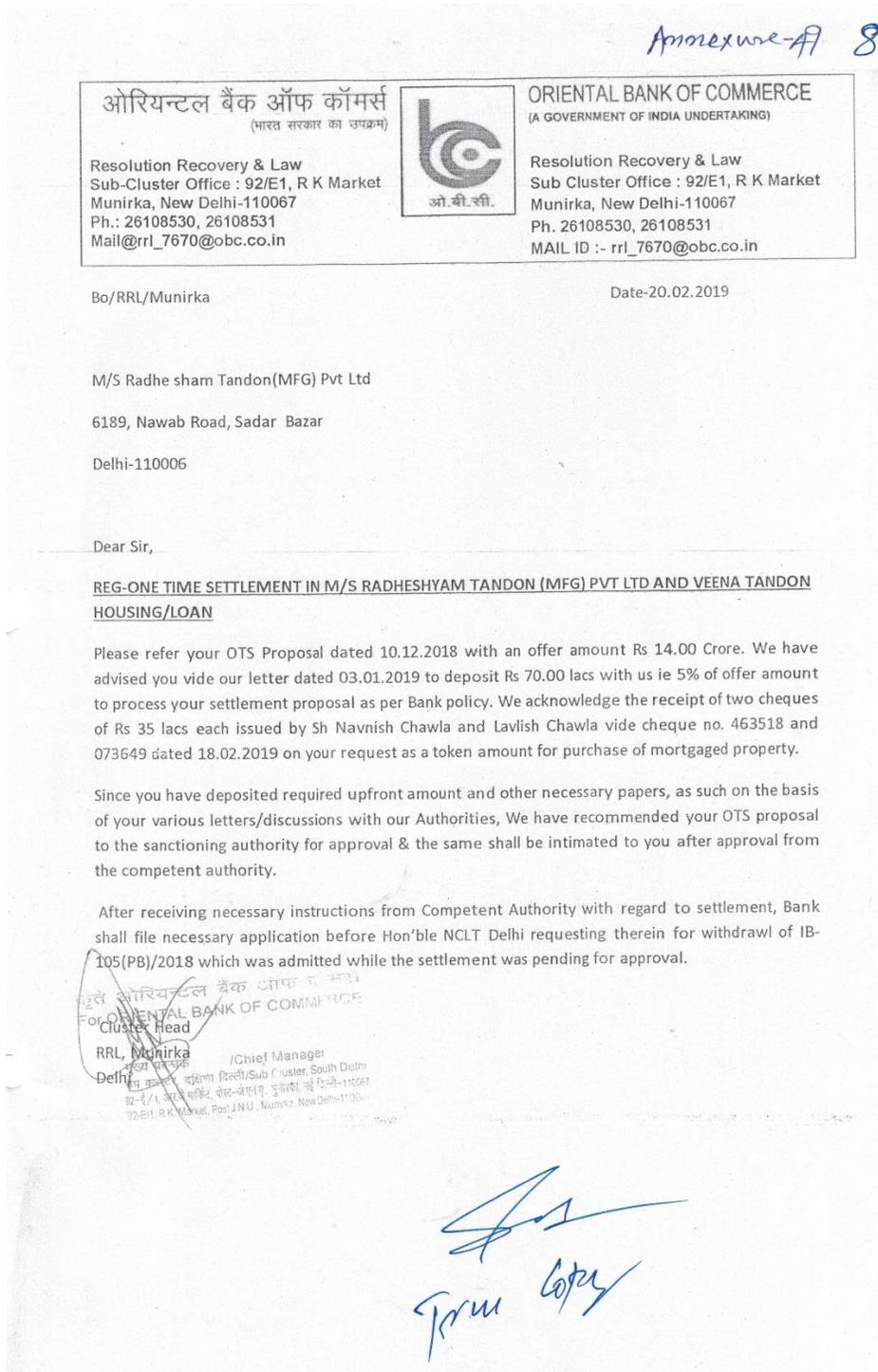
We have been informed that the CoC has been constituted on 01.03.2019. The ratio of the judgment of Hon’ble the Supreme Court in para 52 rendered in the case of Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India and Ors.

(25.01.2019 delivered in Writ Petition (C) No. 99 of 2018)
would have not applicable to the present application.
Accordingly, the application is not maintainable and stands
dismissed.”

2. On 26th March, 2019, when the matter was taken up, learned counsel for the Appellant submitted that during the pendency of the petition on 7th September, 2018, the Corporate Debtor and the Financial Creditor made a joint statement before the Adjudicating Authority that they were negotiating for settlement. One Time Settlement has been reached with the Financial Creditor which has been communicated by its letter dated 3rd January, 2019 and accepted by the Corporate Debtor on 10th December, 2018 which is much prior to the constitution of the Committee of Creditors, which was constituted on 1st March, 2019. It is submitted that it is in this background , the Appellant moved before the Adjudicating Authority to pass order in terms of observations of Hon’ble Supreme Court at para 52 in its decision in ‘*Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*’, Writ Petition (Civil) No. 99/2018, reported in 2019 SCC OnLine SC 73,

3. On notice the Oriental Bank of Commerce (Financial Creditor) has appeared and learned counsel for the Financial Creditor accepts that the terms of settlement reached finality and implemented on 20th February, 2019.

Reliance has been placed on letter dated 20th February, 2019 issued by the Financial Creditor (Oriental Bank of Commerce), which reads as follows:-



4. In view of the aforesaid fact, we are of the view that the present case is covered by the decision of Hon'ble Supreme Court in *Swiss Ribbons Pvt. Ltd. & Anr. Vs. Union of India & Ors.*' (*Supra*) and the Adjudicating Authority should have exercised its inherent power and closed the application under Section 7.

5. Mr. Sabhya Chaudhary, learned counsel appearing on behalf of the Resolution Professional submits that the Committee of Creditors was constituted on 1st March, 2019. However, we have noticed the aforesaid fact in the preceding paragraph. Learned counsel for Respondent – Financial Creditor submits that fee and resolution cost payable to the Resolution Professional has already been paid.

6. Mr. Arvind Sinha, Advocate wants to file an intervention application on behalf of one of the Financial Creditor. However, in view of the settlement reached such prayer is not allowed. If any Financial Creditor wants to file claim against the Corporate Debtor, he may move before the appropriate forum for appropriate relief.

7. For the reasons aforesaid we set aside the impugned order dated 13th March, 2019 and accept the prayer made on behalf of the Financial Creditor – 'Oriental Bank of Commerce' and allow Financial Creditor to withdraw its application under Section 7, which stands disposed of as withdrawn. The Adjudicating Authority will closed the proceeding.

8. In the result, order(s) passed by the Adjudicating Authority appointing 'Resolution Professional', declaring moratorium, freezing of account, and all other order(s) passed pursuant to impugned order and action taken by the 'Resolution Professional', including the advertisement published in the newspaper calling for applications and actions are declared illegal and are set aside. The 'Corporate Debtor' is released from the rigour of law and is allowed to function independently through its Board of Directors from immediate effect.

9. The appeal is allowed with aforesaid observations. However, there shall be no order as to cost.

[Justice S. J. Mukhopadhaya]
Chairperson

[Justice A. I. S. Cheema]
Member (Judicial)

(Kanthi Narahari)
Member (Technical)

am/gc